

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 16, 2011
Bulk Item: Yes ☐ No ☒

Division: Growth Management
Department: Building
Staff Contact Person/Phone #:
Christine Hurley/Joseph Paskalik 289-2574

AGENDA ITEM WORDING: Discussion of FEMA response letter related to County proposed amendment of flood plain ordinance in light of recent state legislation (House Bill 407) that pre-empts a provision of the County Code that requires a home owner to submit to an inspection when applying for a permit on a portion of the property unrelated to the downstairs enclosures (that may be illegal based on flood plain requirements) and replacing it with a Certificate of Compliance Program.

ITEM BACKGROUND: The State of Florida legislature passed (House Bill 407), which is effective July 1, 2012 (see attached). The County has three primary regulatory programs under their flood plain ordinance.

1. FEMA Pilot Program
2. Inspection of any suspected living area within downstairs enclosures (below base flood elevation) on Building Permit (MC Code Section 6-107)
3. Inspection of any suspected living area within downstairs enclosures (below base flood elevation) on transfer (sale) (MC Code Section 122-6)

HB407 impacts the County's 2nd regulatory program (Inspection on Building Permit). Staff discussed this bill with FEMA representative, Brad Lohr prior to bill ratification. FEMA indicated their willingness to work with Monroe County to develop an alternative, should the bill pass. With bill passage, staff needs to begin development of an alternative program, working with FEMA, to assure MC future eligibility in the National Flood Insurance Program (NFIP). Attached is a summary of a proposed alternative and the letter staff mailed to FEMA to get their opinion on whether the Certificate of Compliance Program would be an adequate replacement of the Inspection of Building Permit Program. FEMA has responded to the County's letter (also attached). Staff will bring forward an amendment to the Implementation Plan for the Flood Insurance Inspection and Compliance Program (Resolution 152-2003) and an ordinance revising Chapter 122 during the next several months.

PREVIOUS RELEVANT BOCC ACTION:

6-15-11 BOCC directed staff to develop alternative to inspection on permit process and obtain FEMA guidance prior to developing ordinance amending floodplain program

BOCC adopted a floodplain ordinance in 1975, which as been modified and amended several times during the intervening years.

February 17, 2010 the Board adopted Resolution 026-2010, calling on FEMA to end the Pilot Inspection Program codified at 44 CFR 59.30

CONTRACT/AGREEMENT CHANGES: n/a

STAFF RECOMMENDATIONS: Direct Staff to develop an alternative process for Flood Plain compliance and meet with FEMA officials in Atlanta

TOTAL COST: N/A **INDIRECT COST:** N/A **BUDGETED:** Yes ☐ No ☐

DIFFERENTIAL OF LOCAL PREFERENCE: _____

COST TO COUNTY: _____ **SOURCE OF FUNDS:** N/A

REVENUE PRODUCING: N/A **AMOUNT PER MONTH** _____ **Year** _____

APPROVED BY: County Atty _____ OMB/Purchasing _____ Risk Management _____

DOCUMENTATION: Included ☒ Not Required _____

DISPOSITION: _____ **AGENDA ITEM #** _____



**FEMA
RECEIVED**

October 14, 2011

OCT 21 2011

Ms. Christine Hurley, AICP
Growth Management Division Director
2798 Overseas Highway, Suite 400
Marathon, Florida 33050

GROWTH MANAGEMENT DIVISION

Dear Ms. Hurley:

This letter is in response to your proposal, dated August 16, 2011, to outline how Monroe County will continue to comply with the ongoing pilot inspection procedure and the National Flood Insurance Program (NFIP) regulations, and with the recent passage of the State of Florida House Bill 407, which prohibits the County from requiring an inspection of other areas that are not the subject of the building permit. This new legislation prohibits the County from inspecting lower level enclosures upon application for a building permit if the enclosure is not directly impacted by the proposed work. To maintain County's continued eligibility in the NFIP, you proposed two alternatives to the inspection programs the County currently conducts: 1) the Inspection on Transfer Program; and 2) the Certificate of Compliance Program.

The Inspection on Transfer Program is intended to provide an opportunity to record and monitor properties with lower level enclosures that have not received a County compliance inspection prior to the sale or transfer of the property. You stated that this inspection is not intended to be used to identify or prosecute any other unpermitted improvements that are not subject to the floodplain regulations, and that structures would not have to be brought into compliance prior to the transfer. This approach is an effective part of a compliance program; however, we would recommend strengthening this process to include closer monitoring; or, attaching a compliance agreement that the buyer would sign as a condition of sale or transfer. Of particular concern is that once these properties are transferred, Monroe County would have limited opportunities to gain compliance until the property was transferred or sold again, or was substantially damaged or improved.

Despite passage of Florida House Bill 407, according to Title 44 of the Code of Federal Regulations, Section 59.30 (44 CFR §59.30), insurers will continue to send a notice to the flood insurance policyholder that an inspection report may be required for new or renewed flood insurance policies. By participating in the NFIP and the pilot inspection program, Monroe County has the responsibility to enforce the provisions in their flood damage prevention ordinance to bring insured and non-insured buildings with noncompliant lower level enclosures below the "lowest floor" into compliance. FEMA supports and encourages the County to require a compliance inspection of lower level enclosures in the event of the sale or transfer of real property.

The Certificate of Compliance Program will apply to all structures in Special Flood Hazard Areas that have habitable areas below the lowest floor, but exclude those which received inspections through the pilot inspection procedure. We concur with your assessment that the Certificate of Compliance Program will foster a positive real estate market condition, and will assure future buyers that the structure is compliant. Additionally, sellers, real estate agents, and other property owners, would be more likely to request inspections and correct violations to alleviate any future obstacles to transferring the property. This approach has been highly successful in assisting other NFIP communities gain compliance related to limitations on residential inspections and we strongly support this direction. We also support recording with the County a "Notice of Non-Conversion" to new construction and to structures that are brought into compliance. FEMA supports the Certificate of Compliance Program as a method for Monroe County to fulfill its obligations according to 44 CFR §59.30 to bring uninsured structures into compliance.

Should you or your staff have any questions or need further clarification on the Monroe County inspection program, please contact Prasad Inmula of our Mitigation staff at (770) 220-8841 or at prasad.inmula@dhs.gov.

Sincerely,



Brad G. Loar, CFM
Director
Mitigation Division

County of Monroe

Growth Management Division

Office of the Director
2798 Overseas Highway
Suite #400
Marathon, FL 33050
Voice: (305) 289-2517
FAX: (305) 289-2854



Board of County Commissioners
Mayor Heather Carruthers, Dist. 3
Mayor Pro Tem David Rice, Dist. 4
Kim Wigington, Dist. 1
George Neugent, Dist. 2
Sylvia Murphy, Dist. 5

We strive to be caring, professional and fair

August 16, 2011

Mr. Brad G. Loar, CFM, Director
Mitigation Division
Federal Emergency Management Agency
Department of Homeland Security, Region IV
3003 Chamblee Tucker Road
Atlanta, GA 30341

Dear Mr. Loar:

As you know, Monroe County has three primary floodplain compliance programs to assure illegal post-FIRM enclosures of structures below base flood elevation are remedied as follows:

1. Pilot Inspection Program – whereby insured residents are required to obtain an inspection of their downstairs enclosures for continuance of flood insurance
2. Inspection upon request for building permit
3. Inspection upon sale

These three programs resulted from an April 16, 2003 resolution by the Monroe County Board of County Commissioners that included a remedial plan (attached). The remedial plan has been implemented through the County Code of Ordinances.

In 2011, the State of Florida Legislature passed Chapter 2011-82 Laws of Florida (House Bill 407) (attached), which prohibits the County from requiring an inspection of other areas not the subject of a building permit. This pre-emptive legislation prevents Monroe County from inspecting downstairs enclosures upon application for a building permit if the downstairs enclosure is not directly impacted by the proposed work.

Under Section 6-107 of the Monroe County Code, which was adopted as part of performance under the remedial plan, the process for inspection upon building permit is as follows:

1. Homeowner asks for building permit and must submit property record card with application.
2. Staff reviews property record card to determine if living area exists in downstairs, then writes letter to property owner notifying them of need for inspection.

3. Property owner calls for inspection.
4. Perform inspection.
5. If not in compliance with floodplain management ordinances, owners are notified of required remedies.
6. If permit that was applied for originally was for something irrelevant to the downstairs enclosures (e.g. roof, fence, etc.), permit is issued after inspection of downstairs area.
7. If not in compliance, and no remedy is made for downstairs enclosure in time period given (3-6 months depending upon severity of violation (plumbing/electric requires permitting so longer time period given), violation is referred to Code Enforcement.
8. Code Enforcement sends Notice of Violation (explaining violation, suggested solutions, and who to contact to remedy) and sets hearing before Special Magistrate.
9. Special Magistrate hears case
 - a. If there is a finding that property is not in compliance:
 - i. Gives new compliance date
 - ii. Sets fines starting day after compliance date
 - iii. Property owner has 30 days to initiate appeal process
 - b. If there is a finding that property is in compliance case is dismissed.

The above process will be unenforceable due to Chapter 2011-82 Laws of Florida. You indicated to County staff and at least one of our Commissioners that under HB407, Monroe County has until July 1, 2012 to adopt an ordinance that will provide for an alternative to Monroe County Code Sec. 6-107. You have indicated this must be approved by FEMA. The following proposal is offered to modify Monroe County Code Sec. 6-107, which includes the Implementation Plan, per FEMA's requirements, for continuing participation in the NFIP.

The Monroe County Board of County Commission did discuss this alternative proposal, and I am requesting written confirmation that FEMA considers this alternative adequate prior to our embarking on developing ordinances and processing them through a public hearing process.

Proposed Certificate of Compliance Program to replace Inspection on Building Permit Program:

The County is seeking to obtain definitive data from the Monroe County Property Appraiser which will identify all single family residences which contain enclosures that are identified as living area on the ground floor. Once this data is captured, our technical staff will deduct all the parcels that have already received inspections via the pilot program or other programs, and been made compliant.

The remaining property owners will be notified that an inspection will be required in order to verify compliance with the Monroe County Floodplain Ordinance.

Once the owners obtain this inspection, and are compliant, they will receive a Certificate of Compliance. This is a proactive opportunity for property owners to receive evidence that they have a compliant structure which will create a positive market condition. If owners have a non-compliant structure, they will be notified of all the required corrections to the enclosure to become compliant with the permit authorizing the construction, OR the violation will be forwarded to the Code Compliance Department for prosecution.

Finally, once a property is compliant, the County will provide a non-conversion agreement (with a corresponding drawing attached) to be signed by the property owner and recorded by the county in the County land records so buyers of properties understand what has been approved for areas below base flood elevation.

This non-conversion agreement will provide protection to future buyers through title work. Every two years an updated potential ground floor enclosure list will be reviewed, and any changes to the Property Record that indicate illegal construction below base flood elevation will go through the inspection process outlined above again.

The County may also consider obtaining a list of all properties that have transferred ownership and any such property that failed to obtain the required inspection will be contacted for inspection.

In addition, all new construction that contains any type of below base flood elevation enclosure will be required to record a "Notice of Non-Conversion" to the property, which should alleviate this problem in the future.

I am attaching:

1. An underline/strikethrough of a proposed amended Resolution that includes a Remedial Plan amendment, originally approved to alleviate Monroe County being on probation or suspension from the National Flood Insurance Program (NFIP).
2. A clean version of the proposed amended Resolution that includes a Remedial Plan amendment, originally approved to alleviate Monroe County being on probation or suspension from the National Flood Insurance Program (NFIP).

We are seeking written confirmation that FEMA considers these changes to the Remedial Plan acceptable as well. This is the same program County staff discussed with FEMA representatives in Washington DC. Susan Wilson was included in that meeting, by telephone.

Monroe County staff is willing to travel to Atlanta to discuss this alternative proposal in person if FEMA officials feel this is necessary, prior to sending written verification that this alternative is acceptable.

Please let us know if this program meets with your approval.

Sincerely,

MONROE COUNTY



Christine Hurley, AICP
Growth Management Division Director

Enclosures
CH/mt

RESOLUTION ~~187-2002~~ 152-2003

A RESOLUTION AMENDING RESOLUTION NO. ~~187-2002~~ 152-2003 OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY APPROVING A REVISED IMPLEMENTATION PLAN FOR THE FLOOD INSURANCE INSPECTION AND COMPLIANCE PROGRAM FOR SUBMITTAL TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY

WHEREAS, the Board of County Commissioners ("BOCC") adopted Resolution No. ~~187-2002~~ 152-2003 on April 17th, 2003, approving a revised remedial plan for submittal to the Federal Emergency Management Administration (FEMA), called the "Implementation Plan for Monroe County Flood Insurance Inspection and Compliance Program" to meet one of the requirements identified in a letter from FEMA's Region IV Director, dated January 14, 2002; and,

WHEREAS, the revised "Implementation Plan for Monroe County Flood Insurance Inspection and Compliance Program" was subsequently approved by FEMA; and,

~~**WHEREAS**, as required in revised implementation plan, the County through the offices of State Representative Ken Sorenson, requested, but was unable to obtain any relief from the Florida Legislature to amend provisions of the Florida Statutes barring the County from directly bringing non-compliant downstairs enclosures with non-compliant improvements of more than four years old into compliance; and;~~

~~**WHEREAS**, the State of Florida Legislature adopted House Bill 407 (attached as Exhibit 2) that has rendered Section 1 under "Actions to Ensure No New Additional Non-conforming Structures" unenforceable; and,~~

~~**WHEREAS**, Monroe County received confirmation from FEMA officials that if House Bill 407 was passed by the Florida Legislature FEMA would consider and alternative replacement remedial action to continue to assure the elimination of illegal enclosures below base flood elevation; and~~

WHEREAS, the Growth Management Division staff prepared draft amendments to the County's floodplain regulations in accordance with the Implementation plan; and,

~~**WHEREAS**, significant legal and political concerns regarding the proposed amendments to the existing floodplain regulations were raised during the public hearing process, particularly requirements for the imposition of restrictive covenants to allow County compliance inspections; and,~~

~~**WHEREAS**, the Board of County Commissioners tabled the adoption of the proposed amendments and directed the County Growth Management Division staff in coordination with the Commission's FEMA liaison and County Attorney to prepare an alternative approach that meets FEMA's concerns about the enforceability of the County's floodplain regulations; and,~~

~~**WHEREAS**, a County delegation headed by the Commission's FEMA's Liaison met with FEMA Region IV officials on March 18th, 2003, and received tentative approval from FEMA for the County's alternative proposal;~~

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA that:

Section 1. The BOCC hereby amends Resolution No. ~~187-2002~~ 152-2003, by replacing Exhibit 1, "2011 Implementation Plan for Monroe County Flood Insurance Inspection and Compliance Program", with a new Exhibit 1 which is attached hereto.

Section 2. The County Administrator is directed to expeditiously transmit this Resolution and attached exhibit to the Region IV Office of FEMA.

Section 3. The Growth Management Division staff is directed to prepare new amendments to the County's floodplain regulations based on Exhibit 1 and re-initiate the process for consideration of these text amendments ~~starting with the Planning Commission.~~

PASSED AND ADOPTED Board of County Commissioners of Monroe County at a regular meeting of said Board held on the ~~16th~~ day of ~~April~~, A.D., ~~2003~~.

_____	Mayor Dixie Spehar	yes
_____	Mayor Pro Tem Murray Nelson	yes
_____	Commissioner Charles "Sonny" McCoy	yes
_____	Commissioner George Neugent	yes
_____	Commissioner David Rice	yes

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

EXHIBIT 1
~~2011 REVISED~~ IMPLEMENTATION PLAN FOR THE MONROE COUNTY
FLOOD INSURANCE INSPECTION AND COMPLIANCE PROGRAM

Flood Insurance Inspection Program

- Prior to March 14, 2002, the Growth Management Division staff submitted a complete list of the names and addresses of owners (policy holders provided by FEMA) of all structures less than four years old that may contain possible violations of the County's floodplain regulations to the Federal Emergency Flood Insurance and Mitigation Division (FEMA/NFIP).
- In June, 2002, the County Growth Management Division staff began submitting monthly to FEMA/NFIP, the names and addresses of approximately 50 owners (policy holders) of structures with possible conflicts with violations of the County's floodplain regulation. The compiled lists are being sent to FEMA, starting with the newest structures working back through to the oldest structures. In November, 2010, the last of the policy holders were submitted to FEMA/NFIP and
- ~~The County's Building and Code Enforcement staff is conducting inspections and implementing the Flood Insurance Inspection and Compliance Program as outlined in the Federal Register. [As of March 21, 2003, the County staff has conducted 54 inspections, identified 27 structures with code conflicts and brought 7 structures into compliance with the floodplain regulations.]~~
- ~~As an element of the inspection program, the County staff is collecting and recording the amount and number of flood insurance claims submitted for each inspected structure to be supplemented by data produced from County required inspections and property tax records. [This information will be used for calibrating and updating the flood damage model and to assist underwriters in setting insurance rates for structures with downstairs enclosures.]~~
- In addition to the Floodplain Compliance program in the Federal Register, the County has developed two additional Floodplain Compliance Programs to gain compliance with Floodplain regulations:
 1. Inspection on Transfer Program; and
 2. Certificate of Compliance Program

~~Florida Keys Flood Damage Model~~

~~At the county's request, FEMA had its engineering consultant complete an evaluation of the validity and accuracy of the existing Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) for Monroe County and found them to be technically valid and accurate. As more updated information becomes available from the County's Flood Insurance Inspection program,~~

compliance inspections, and the property tax records, FEMA is requested to use this information in the recalculation of insurance risk assessments and rates.

Remediation of Non-conforming Structures Including Those Older than Four Years

- There is no 4 year bar of prosecution for structures that do not meet floodplain regulations, that did not receive permits and were constructed illegally and therefore, Monroe County shall enforce floodplain requirements for any structure that has been constructed or improved without benefit of a permit or approval from Monroe County to the greatest extent enforceable by law. As agreed upon in its initial Implementation Plan for the Flood Insurance Inspection and Compliance Program, Monroe County through State Representative Ken Sorenson did attempt to seek legislative relief from the statute of limitations barring code enforcement prosecution of violations of the County's floodplain regulations more than four years old; however, the County was rebuffed by the legislature's General Counsel and Director of Bill Drafting.

For the foreseeable future the stature of limitations is not going to be modified by an act of the Florida Legislature. As such, any structures with unpermitted improvements of more than four years old are considered by judicial ruling to be "defacto" non-conforming. Therefore, any efforts on the County's part to bring these non-conforming structures into compliance must be consistent with provisions of Section 95.11(3), Florida Statutes.

- The County's inspection program includes of all post-FIRM structures, even those structures with unpermitted improvements more than four years old. The County Commission and its Growth Management Division staff believe that a significant percentage of structures with unpermitted, non-conforming below base flood elevation improvements will voluntarily come into compliance through this multiyear flood insurance inspection program.

As these structures with potential unpermitted improvements that conflict with the floodplain regulations are identified by the County staff through the flood insurance inspection program, the County will provide a list to FEMA of those structures. If the owners of these structures refuse the inspection, their insurance may not be renewed by their insurer.

The property owner of any structure inspected by the County that is determined to have an unpermitted improvement will have six months, if the violation is more than four years old, or two months, if the improvement is less than four years old, to obtain a permit to bring the structure into compliance. If the owner of a property with an identified conflict with the code chooses not to obtain the permit by the deadline established above, or obtains the permit but no approved final inspection occurs within 60 days after issuance of the permit, the County will pursue one of the following actions as applicable:

- 1) If the violation is less than four years old, the County will expeditiously pursue code enforcement action and will formally submit a declaration for denial of the property owner's insurance to FEMA pursuant to Section 1316 of the National Flood Insurance Act if the structure is not brought into compliance.
- 2) If the violation is beyond the four year stature of limitations, the County will submit a declaration for denial of the property owner's insurance to FEMA pursuant to Sections 1316 of the National Flood Insurance Act.

- ~~o In situations where an unpermitted improved downstairs enclosure is found to be occupied by a very low to moderate income household during the Flood Insurance Inspection and Compliance Program, the County will provide the opportunity for the property owner to apply for additional compliance time in accordance with the FEMA approved "Plan and Procedures for Allowing an Extension from Compliance Deadlines under the Monroe County Flood Insurance Inspection Program for Eligible Non-compliant Below-Base Flood Enclosures Used for Affordable Housing" adopted by Board of County Commissioners' Resolution #397-2002.~~

Actions to Ensure No New Additional ~~Non-conforming-Illegal~~ Structures

- ~~o Although the County is currently limited by the four year statute of limitations as to code enforcement action, t~~The County through its County Growth Management Division will implement the following actions, consistent with the Florida Statutes, to ensure that any new conflicts ~~between the way structures were originally permitted and~~ with the floodplain regulations are resolved ~~in a timely manner and do not become subject to the four year statute of limitations barring code enforcement prosecution:~~
 - 1) ~~Amend~~ **Inspection on Transfer of Ownership Program.** ~~Maintain~~ the existing floodplain regulations and appropriate sections of the County Code to require that any residential structure having a downstairs enclosure with an opaque wall covering have a County compliance inspection prior to transfer of property ~~or prior to the issuance of a building permit for any structural alteration or expansion of the elevated portion of the structure;~~ and to provide that such inspections required prior to the transfer of property can be conducted, at the discretion of the property owner, by either the County staff or a registered architect or professional engineer. [The requirement for an inspection prior to the transfer of property does not also require that the property be brought into compliance prior to transfer or, subsequent to transfer, ~~however, if the unpermitted improvement is less than four years old, it may be subject to code enforcement action (see No.5).~~ The sole intent of this inspection is to provide information for recording and monitoring improvements to downstairs enclosures subject to the County's floodplain regulations. This inspection is not intended to be used to identify or prosecute any other unpermitted improvements that are not subject to the floodplain regulations.]
 - ~~2) Amend the existing floodplain regulations to specifically require that the issuance of any permit to a downstairs enclosure, other than a demolition permit or a permit to remedy a life safety hazard, be contingent upon bringing the downstairs enclosure into compliance with the floodplain regulations.~~
 - 2) ~~Amend~~ **Maintain** the existing floodplain regulations to allow the expansion or structural alteration of the elevated portion of any residential structure non-conforming with the floodplain regulations contingent upon the following conditions as appropriate: a) the improvement is not substantial as defined under the floodplain regulations; b) a pre-permitting inspection is completed by the County to document the extent of the non-conformity; and, c) if within a "V" zone, the submittal of a professional engineer's or registered architect's sealed certification that the non-conforming improvements to the downstairs enclosure do not subject the elevated portion of the structure to increases structural damage.

3) Certificate of Compliance Program. Amend the existing floodplain regulations to implement a Certificate of Compliance Program including:

- a. Obtaining data from the Monroe County Property Appraiser which will identify all single family residences which contain enclosures that are identified as living area on the ground floor. Once this data is captured, technical staff will deduct all the parcels that have already received inspections via the pilot program, transfer of ownership program, or the previously applicable inspection on building permit program, and been made compliant.
 - b. The remaining property owners will be notified via mail that an inspection is required in order to verify compliance with the Monroe County Floodplain Ordinance.
 - c. Once the owners obtain this inspection, and are compliant, they will receive a Certificate of Compliance. This is a proactive opportunity for property owners to receive evidence that they have a compliant structure which will create a positive market condition. If an owner has a non-compliant structure, they will be notified of all the required corrections to the enclosure to become compliant with the permit authorizing the construction, OR the violation will be forwarded to the Code Compliance Department for prosecution.
 - d. Once a property is compliant, the County will provide a non-conversion agreement (with a corresponding drawing attached) to be signed by the property owner and recorded by the county in the County land records so buyers of properties understand what has been approved for areas below base flood elevation.
 - e. This non-conversion agreement will provide protection to future buyers through title work. Every two years an updated potential ground floor enclosure list will be reviewed, and any changes to the Property Record that indicate illegal construction below base flood elevation will go through the inspection process outlined above again.
 - f. The County may also consider obtaining a list of all properties that have transferred ownership and any such property that failed to obtain the required inspection will be contacted for inspection.
- 3)g. New construction that contains any type of below base flood elevation enclosure, will be required to record a "Notice of Non-Conversion" to the property, which should alleviate this problem in the future.

- 4) Conduct required inspections of downstairs enclosures as stipulated in Actions #1 - #3 above.
- 5) Continue to vigorously pursue code enforcement action for violation of the County floodplain regulations, for properties developed after the Flood Insurance Rate Maps were implemented, through code enforcement and the normal permitting process, including prosecution of owners of structures, where property tax records and/or evidence from inspections provide probable cause of a ~~violation that is less than four years old~~.
- 6) Request that FEMA provide the County with a "Submit to Rate" for any applications for new flood insurance policies on previously uninsured properties with a possible violation, so that the County may pursue compliance under code enforcement proceedings, ~~if the violation is less than four years old, or if older than four years~~, through a Section 1316 declaration.
- 7) ~~Amend the~~Maintain existing floodplain regulations to only allow enclosing with opaque materials of downstairs enclosures of 299 square feet or less in area.
- 8) Request the Monroe County Appraiser to provide the County Growth Management Division with an annual update by residential property owner from the County property tax records of the changes in the habitable floor area of downstairs enclosures, if feasible and practical.
- 9) Identify and compile for Monroe County's flood insurance inspection and compliance program a list of all structures that fail to come into compliance and submit a quarterly progress report to FEMA beginning July, 2003.
- 10) Evaluate Monroe County's Flood Insurance Inspections and Compliance Program by June 2004, and if necessary, develop and implement further remedial actions with FEMA's approval, to ensure enforcement of the County's floodplain regulations.

The County Growth Management Division staff has the sufficient resources to implement the above program ~~over six year period~~.

RESOLUTION

A RESOLUTION AMENDING RESOLUTION NO. 152-2003 OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY APPROVING A REVISED IMPLEMENTATION PLAN FOR THE FLOOD INSURANCE INSPECTION AND COMPLIANCE PROGRAM FOR SUBMITTAL TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY

WHEREAS, the Board of County Commissioners ("BOCC") adopted Resolution No. 152-2003 on April 16, 2003, approving a revised remedial plan for submittal to the Federal Emergency Management Administration (FEMA), called the "Implementation Plan for Monroe County Flood Insurance Inspection and Compliance Program" to meet one of the requirements identified in a letter from FEMA's Region IV Director, dated January 14, 2002; and,

WHEREAS, the revised "Implementation Plan for Monroe County Flood Insurance Inspection and Compliance Program" was subsequently approved by FEMA; and,

WHEREAS, the State of Florida Legislature adopted House Bill 407 (attached as Exhibit 2) that has rendered Section 1 under "**Actions to Ensure No New Additional Non-conforming Structures**" unenforceable; and,

WHEREAS, Monroe County received confirmation from FEMA officials that if House Bill 407 was passed by the Florida Legislature FEMA would consider an alternative replacement remedial action to continue to assure the elimination of illegal enclosures below base flood elevation; and

WHEREAS, the Growth Management Division staff prepared draft amendments to the County's floodplain regulations in accordance with the Implementation plan; and,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA that:

Section 1. The BOCC hereby amends Resolution No. 152-2003, by replacing Exhibit 1, "2011 Implementation Plan for Monroe County Flood Insurance Inspection and Compliance Program", with a new Exhibit 1 which is attached hereto.

Section 2. The County Administrator is directed to expeditiously transmit this Resolution and attached exhibit to the Region IV Office of FEMA.

Section 3. The Growth Management Division staff is directed to prepare new amendments to the County's floodplain regulations based on Exhibit 1 and re-initiate the process for consideration of these text amendments.

PASSED AND ADOPTED Board of County Commissioners of Monroe County at a regular meeting of said Board held on the day of , A.D.,.

EXHIBIT 1
2011 IMPLEMENTATION PLAN FOR THE MONROE COUNTY
FLOOD INSURANCE INSPECTION AND COMPLIANCE PROGRAM

Flood Insurance Inspection Program

- Prior to March 14, 2002, the Growth Management Division staff submitted a complete list of the names and addresses of owners (policy holders provided by FEMA) of all structures less than four years old that may contain possible violations of the County's floodplain regulations to the Federal Emergency Flood Insurance and Mitigation Division (FEMA/NFIP).

In June, 2002, the County Growth Management Division staff began submitting monthly to FEMA/NFIP, the names and addresses of approximately -50 owners (policy holders) of structures with possible conflicts with violations of the County's floodplain regulation. The

compiled lists are being sent to FEMA, starting with the newest structures working back through to the oldest structures. In November, 2010, the last of the policy holders were submitted to FEMA/NFIP and the County's Building and Code Enforcement staff is conducting inspections and implementing the Flood Insurance Inspection and Compliance Program as outlined in the Federal Register.

- o In addition to the Floodplain Compliance program in the Federal Register, the County has developed two additional Floodplain Compliance Programs to gain compliance with Floodplain regulations:
 1. Inspection on Transfer Program; and
 2. Certificate of Compliance Program

Remediation of Non-conforming Structures Including Those Older than Four Years

There is no 4 year bar of prosecution for structures that do not meet floodplain regulations, that did not receive permits and were constructed illegally and therefore, Monroe County shall enforce floodplain requirements for any structure that has been constructed or improved without benefit of a permit or approval from Monroe County to the greatest extent enforceable by law

Actions to Ensure No New Additional Illegal Structures

- o The County through its County Growth Management Division will implement the following actions, consistent with the Florida Statutes, to ensure that any new conflicts between the way structures were originally permitted and with the floodplain regulations are resolved timely:
 - 1) **Inspection on Transfer of Ownership Program.** Maintain the existing floodplain regulations and appropriate sections of the County Code to require that any residential structure having a downstairs enclosure with an opaque wall covering have a County compliance inspection prior to transfer of property; and to provide that such inspections required prior to the transfer of property can be conducted, at the discretion of the property owner, by either the County staff or a registered architect or professional engineer. [The requirement for an inspection prior to the transfer of property does not also require that the property be brought into compliance prior to transfer or, subsequent to transfer. The sole intent of this inspection is to provide information for recording and monitoring improvements to downstairs enclosures subject to the County's floodplain regulations. This inspection is not intended to be used to identify or prosecute any other unpermitted improvements that are not subject to the floodplain regulations.]
 - 2) Maintain the existing floodplain regulations to allow the expansion or structural alteration of the elevated portion of any residential structure non-conforming with the floodplain regulations contingent upon the following conditions as appropriate: a) the improvement is not substantial as defined under the floodplain regulations; b) a pre-permitting inspection is completed by the County to document the extent of the non-conformity; and, c) if within a "V" zone, the submittal of a professional engineer's or registered architect's sealed certification that the non-conforming improvements to the downstairs enclosure do not subject the elevated portion of the structure to increases structural damage.

3) **Certificate of Compliance Program.** Amend the existing floodplain regulations to implement a Certificate of Compliance Program including:

- a. Obtaining data from the Monroe County Property Appraiser which will identify all single family residences which contain enclosures that are identified as living area on the ground floor. Once this data is captured, technical staff will deduct all the parcels that have already received inspections via the pilot program, transfer of ownership program, or the previously applicable inspection on building permit program, and been made compliant.
- b. The remaining property owners will be notified via mail that an inspection is required in order to verify compliance with the Monroe County Floodplain Ordinance.
- c. Once the owners obtain this inspection, and are compliant, they will receive a Certificate of Compliance. This is a proactive opportunity for property owners to receive evidence that they have a compliant structure which will create a positive market condition. If an owner has a non-compliant structure, they will be notified of all the required corrections to the enclosure to become compliant with the permit authorizing the construction, OR the violation will be forwarded to the Code Compliance Department for prosecution.
- d. Once a property is compliant, the County will provide a non-conversion agreement (with a corresponding drawing attached) to be signed by the property owner and recorded by the county in the County land records so buyers of properties understand what has been approved for areas below base flood elevation.
- e. This non-conversion agreement will provide protection to future buyers through title work. Every two years an updated potential ground floor enclosure list will be reviewed, and any changes to the Property Record that indicate illegal construction below base flood elevation will go through the inspection process outlined above again.
- f. The County may also consider obtaining a list of all properties that have transferred ownership and any such property that failed to obtain the required inspection will be contacted for inspection.
- g. New construction that contains any type of below base flood elevation enclosure, will be required to record a "Notice of Non-Conversion" to the property, which should alleviate this problem in the future.

- 4) Conduct required inspections of downstairs enclosures as stipulated in Actions #1 - #3 above.
- 5) Continue to vigorously pursue code enforcement action for violation of the County floodplain regulations, for properties developed after the Flood Insurance Rate Maps were implemented, through code enforcement and the normal permitting process, including prosecution of owners of structures, where property tax records and/or evidence from inspections provide probable cause of a.
- 6) Request that FEMA provide the County with a "Submit to Rate" for any applications for new flood insurance policies on previously uninsured properties with a possible violation, so that the County may pursue compliance under code enforcement proceedings, through a Section 1316 declaration.
- 7) Maintain existing floodplain regulations to only allow enclosing with opaque materials of downstairs enclosures of 299 square feet or less in area.
- 8) Request the Monroe County Appraiser to provide the County Growth Management Division with an annual update by residential property owner from the County property tax records of the changes in the habitable floor area of downstairs enclosures, if feasible and practical.
- 9) Identify and compile for Monroe County's flood insurance inspection and compliance program a list of all structures that fail to come into compliance and submit a quarterly progress report to FEMA beginning July, 2003.
- 10) Evaluate Monroe County's Flood Insurance Inspections and Compliance Program by June 2004, and if necessary, develop and implement further remedial actions with FEMA's approval, to ensure enforcement of the County's floodplain regulations.

The County Growth Management Division staff has the sufficient resources to implement the above program.

A. Zones

**NONCONVERSION AGREEMENT
FOR CERTAIN STRUCTURES IN THE FLOODPLAIN**

Application has been made for a Permit from _____ [community name], Louisiana.

Permit # _____

Property Owner _____

Address _____

Deed dated _____, Recorded _____

Tax map _____, block _____, parcel _____.

Base Flood Elevation at the site is _____ feet (NGVD).

Map Panel Number _____, effective date _____.

In consideration for the granting of a Permit for the above structure, the Property Owner agrees to the following:

1. That the enclosed area below the base flood elevation shall be used solely for parking of vehicles, limited storage, or access to the building and will never be used for human habitation without first becoming fully compliant with the Flood damage prevention ordinance in effect at the time of conversion.
2. That all interior walls, ceilings, and floors below the Base Flood Elevation shall be unfinished or constructed of flood resistant materials.
3. That mechanical, electrical, or plumbing devices shall not be installed below the Base Flood Elevation.
4. The walls of the enclosed areas below the Base Flood Elevation shall be equipped with at least two vents which permit the automatic entry and exit of floodwater with total openings of at least one square inch for every square foot of enclosed area below flood level. The vents shall be on at least two different walls and the bottoms of the vents shall be no more than one foot above grade.
5. That any variation in construction beyond what is permitted shall constitute a violation of this agreement and Section ____ of Ordinance # ____.
6. That this Nonconversion Agreement becomes part of Permit # _____.

_____ Signature of Property Owner	_____ Witness	_____ Date
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At a minimum, the following has been recorded on the deed to the above property: "This structure has received special permission to be constructed in the Special Flood Hazard Area. The lowest floor shall not be finished or converted to a habitable space unless the enclosed area below the Base Flood Elevation becomes fully compliant with Ordinance # _____ in effect at the time of conversion. At this site, the Base Flood Elevation is _____ feet, National Geodetic Vertical Datum."

_____ Signature, Recorder of Deeds	_____ Date
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V - Zones

**NONCONVERSION AGREEMENT
FOR CERTAIN STRUCTURES IN THE COASTAL FLOODPLAIN**

Application has been made for a Permit from _____ [community name], Louisiana.

Permit # _____

Property Owner _____

Address _____

Deed dated _____, Recorded _____

Tax map _____, block _____, parcel _____

Base Flood Elevation at the site is _____ feet (NGVD).

Map Panel Number _____, effective date _____

In consideration for the granting of a Permit for the above structure, the Property Owner agrees to the following:

1. That the enclosed area below the base flood elevation shall be used solely for parking of vehicles, limited storage, or access to the building and will never be used for human habitation without first becoming fully compliant with the Flood damage prevention ordinance in effect at the time of conversion.
2. That the walls shall not be reinforced or altered to negate their ability to break away during a storm and all interior walls, ceilings, and floors below the Base Flood Elevation shall be unfinished or constructed of flood resistant materials.
3. That mechanical, electrical, or plumbing devices shall not be installed below the Base Flood Elevation.
4. That any variation in construction beyond what is permitted shall constitute a violation of this agreement and Section _____ of Ordinance # _____.
5. That this Nonconversion Agreement becomes part of Permit # _____.

_____ Signature of Property Owner	_____ Witness	_____ Date
--------------------------------------	------------------	---------------

At a minimum, the following has been recorded on the deed to the above property: "This structure has received special permission to be constructed in the Special Flood Hazard Area. The lowest floor shall not be finished or converted to a habitable space unless the enclosed area below the Base Flood Elevation becomes fully compliant with Ordinance # _____ in effect at the time of conversion. At this site, the Base Flood Elevation is _____ feet, National Geodetic Vertical Datum."

_____ Signature, Recorder of Deeds	_____ Date
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RESOLUTION 152-2003

A RESOLUTION AMENDING RESOLUTION NO. 187-2002 OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY APPROVING A REVISED IMPLEMENTATION PLAN FOR THE FLOOD INSURANCE INSPECTION AND COMPLIANCE PROGRAM FOR SUBMITTAL TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY

WHEREAS, the Board of County Commissioners ("BOCC") adopted Resolution No. 187-2002 on April 17, 2002, approving a revised remedial plan for submittal to the Federal Emergency Management Administration (FEMA), called the "Implementation Plan for Monroe County Flood Insurance Inspection and Compliance Program" to meet one of the requirements identified in a letter from FEMA's Region IV Director, dated January 14, 2002; and,

WHEREAS, the revised "Implementation Plan for Monroe County Flood Insurance Inspection and Compliance Program" was subsequently approved by FEMA; and,

WHEREAS, as required in revised implementation plan, the County through the offices of State Representative Ken Sorenson, requested, but was unable to obtain any relief from the Florida Legislature to amend provisions of the Florida Statutes barring the County from directly bringing non-compliant downstairs enclosures with non-compliant improvements of more than four-years old into compliance; and,

WHEREAS, the Growth Management Division staff prepared draft amendments to the County's floodplain regulations in accordance with the implementation plan; and,

WHEREAS, significant legal and political concerns regarding the proposed amendments to the existing floodplain regulations were raised during the public hearing process, particularly requirements for the imposition of restrictive covenants to allow County compliance inspections; and,

WHEREAS, the Board of County Commissioners tabled the adoption of the proposed amendments and directed the County Growth Management Division staff in coordination with the Commission's FEMA Liaison and County Attorney to prepare an alternative approach that meets FEMA's concerns about the enforceability of the County's floodplain regulations; and,

WHEREAS, a County delegation headed by the Commission's FEMA Liaison met with FEMA Region IV officials on March 18, 2003, and received tentative approval from FEMA for the County's alternative proposal;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA that:

Section 1. The BOCC hereby amends Resolution No. 187-2002, by replacing Exhibit 1, "Implementation Plan for the Monroe County Flood Insurance Inspection and Compliance Program", with a new Exhibit 1 which is attached hereto.

Section 2. The County Administrator is directed to expeditiously transmit this Resolution and attached exhibit to the Region IV Office of FEMA.

Section 3. The Growth Management Division staff is directed to prepare new amendments to the County's floodplain regulations based on Exhibit 1 and re-initiate the process for consideration of these text amendments starting with the Planning Commission.

PASSED AND ADOPTED Board of County Commissioners of Monroe County at a regular meeting of said Board held on the 16th day of April, A.D., 2003.

Mayor Dixie Spehar	<u>yes</u>
Mayor Pro Tem Murray Nelson	<u>yes</u>
Commissioner Charles "Sonny" McCoy	<u>yes</u>
Commissioner George Neugent	<u>yes</u>
Commissioner David Rice	<u>yes</u>

(SEAL)
ATTEST: Danny K. Kolhage, Clerk

BOARD OF COUNTY COMMISSIONERS OF
MONROE COUNTY, FLORIDA

By: Isabel C. DeSantis
Deputy Clerk

By: Dixie M. Spehar
Mayor/Chairman



FILED FOR RECORD
2003 MAY -6 PM 1:37
JANICE L. KOLHAGE
CLK. CIR. CT.
MONROE COUNTY, FLA.

EXHIBIT 1
REVISED IMPLEMENTATION PLAN FOR
THE MONROE COUNTY
FLOOD INSURANCE INSPECTION AND
COMPLIANCE PROGRAM

Flood Insurance Inspection Program

- O** Prior to March 14, 2002, the Growth Management Division staff submitted a complete list of the names and addresses of owners (policy holders provided by FEMA) of all structures less than four years old that may contain possible violations of the County's floodplain regulations to the Federal Emergency Flood Insurance and Mitigation Division (FEMA/NFIP).
- O** In June, 2002, the County Growth Management Division staff began submitting monthly to FEMA/NFIP, the names and addresses of approximately 50 owners (policy holders) of structures with possible conflicts with violations of the County's floodplain regulations. The compiled lists are being sent to FEMA, starting with the newest structures working back through to the oldest structures.
- O** The County's Building and Code Enforcement staff is conducting inspections and implementing the Flood Insurance Inspection and Compliance Program as outlined in the Federal Register. [As of March 21, 2003, the County staff has conducted 54 inspections, identified 27 structures with code conflicts and brought 7 structures into compliance with the floodplain regulations.]
- O** As an element of the inspection program, the County staff is collecting and recording the amount and number of flood insurance claims submitted for each inspected structure to be supplemented by data produced from County required inspections and property tax records. [This information will be used for calibrating and updating the flood damage model and to assist underwriters in setting insurance rates for structures with downstairs enclosures.]

Florida Keys Flood Damage Model

At the County's request, FEMA had its engineering consultant complete an evaluation of the validity and accuracy of the existing Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) for Monroe County and found them to be technically valid and accurate. As more updated information becomes available from the County's Flood Insurance Inspection program, compliance inspections, and the property tax records, FEMA is requested to use this information in the recalculation of insurance risk assessments and rates.

Remediation of Non-conforming Structures Including Those Older than Four Years

- O** As agreed upon in its initial Implementation Plan for the Flood Insurance Inspection and Compliance Program, Monroe County through State Representative Ken Sorenson did attempt to seek legislative relief from the statute of limitations barring code enforcement prosecution of violations of the County's floodplain regulations more than four years old; however, the County was rebuffed by the Legislature's General Counsel and Director of Bill Drafting.

For the foreseeable future the statute of limitations is not going to be modified by an act of the Florida Legislature. As such, any structures with unpermitted improvements of more than four years old are considered by judicial ruling to be "defacto" non-conforming. Therefore, any efforts on the County's part to bring these non-conforming structures into compliance must be consistent with provisions of Section 95.11(3), Florida Statutes.

- O** The County's inspection program includes of all post-FIRM structures, even those structures with unpermitted improvements more than four-years old. The County Commission and its Growth Management Division staff believe that a significant percentage of structures with unpermitted, non-conforming below base flood elevation improvements will voluntarily come into compliance through this multi-year flood insurance inspection program.

As these structures with potential unpermitted improvements that conflict with the floodplain regulations are identified by the County staff through the flood insurance inspection program, the County will provide a list to FEMA of those structures. If the owners of these structures refuse the inspection, their insurance may not be renewed by their insurer.

The property owner of any structure inspected by the County that is determined to have an unpermitted improvement will have six months, if the violation is more than four years old, or two months, if the improvement is less than four years old, to obtain a permit to bring the structure into compliance. If the owner of a property with an identified conflict with the code chooses not to obtain the permit by the deadline established above, or obtains the permit but no approved final inspection occurs within 60 days after issuance of the permit, the County will pursue one of the following actions as applicable:

- 1) If the violation is less than four-years old, the County will expeditiously pursue code enforcement action and will formally submit a declaration for denial of the property owner's insurance to FEMA pursuant to Section 1316 of the National Flood Insurance Act if the structure is not brought into compliance.

- 2) If the violation is beyond the four-year statute of limitations, the County will submit a declaration for denial of the property owner's insurance to FEMA pursuant to Section 1316 of the National Flood Insurance Act.
- O** In situations where an unpermitted improved downstairs enclosure is found to be occupied by a very low to moderate income household during the Flood Insurance Inspection and Compliance Program, the County will provide the opportunity for the property owner to apply for additional compliance time in accordance with the FEMA approved "Plan and Procedures for Allowing an Extension from Compliance Deadlines under the Monroe County Flood Insurance Inspection Program for Eligible Non-compliant Below Base Flood Enclosures Used for Affordable Housing" adopted by Board of County Commissioners' Resolution #397-2002.

Actions to Ensure No New Additional Non-conforming Structures

- O** Although the County is currently limited by the four-year statute of limitations as to code enforcement action, the County through its County Growth Management Division will implement the following actions, consistent with the Florida Statutes, to ensure that any new conflicts with the floodplain regulations are resolved in a timely manner and do not become subject to the four-year statute of limitations barring code enforcement prosecution:
- 1) Amend the existing floodplain regulations and appropriate sections of the County Code to require that any residential structure having a downstairs enclosure with an opaque wall covering have a County compliance inspection prior to transfer of property or prior to the issuance of a building permit for any structural alteration or expansion of the elevated portion of the structure; and to provide that such inspections required prior to the transfer of can be conducted, at the discretion of the property owner, by either the County staff or a registered architect or professional engineer. [The requirement for an inspection prior to the transfer of property does not also require that the property be brought into compliance prior to transfer or, subsequent to transfer; however, if the unpermitted improvement is less than four years old, it may be subject to code enforcement action (see No.5). The sole intent of this inspection is to provide information for recording and monitoring improvements to downstairs enclosures subject to the County's floodplain regulations. This inspection is not intended to be used to identify or prosecute any other unpermitted improvements that are not subject to the floodplain regulations.]
 - 2) Amend the existing floodplain regulations to specifically require that the issuance of any permit to a downstairs enclosure, other than a demolition permit or a permit to remedy a life safety hazard, be contingent upon

bringing the downstairs enclosure into compliance with the floodplain regulations.

- 3) Amend the existing floodplain regulations to allow the expansion or structural alteration of the elevated portion of any residential structure non-conforming with the floodplain regulations contingent upon the following conditions as appropriate: a) the improvement is not substantial as defined under the floodplain regulations; b) a pre-permitting inspection is completed by the County to document the extent of the non-conformity; and, c), if within a "V" zone, the submittal of a professional engineer's or registered architect's sealed certification that the non-conforming improvements to the downstairs enclosure do not subject the elevated portion of the structure to increased structural damage.
- 4) Conduct required inspections of downstairs enclosures as stipulated in Actions #1-#3 above.
- 5) Continue to vigorously pursue code enforcement action for violation of the County floodplain regulations through code enforcement and the normal permitting process, including prosecution of owners of structures, where property tax records and/or evidence from inspections provide probable cause of a violation that is less than four years old.
- 6) Request that FEMA provide the County with a "Submit to Rate" for any applications for new flood insurance policies on previously uninsured properties with a possible violation, so that the County may pursue compliance under code enforcement proceedings, if the violation is less than four years old, or if older than four years, through a Section 1316 declaration.
- 7) Amend the existing floodplain regulations to only allow enclosing with opaque materials of downstairs enclosures of 299 square feet or less in area.
- 8) Request the Monroe County Appraiser to provide the County Growth Management Division with an annual update by residential property owner from the County property tax records of the changes in the habitable floor area of downstairs enclosures, if feasible and practical.
- 9) Identify and compile for Monroe County's flood insurance inspection and compliance program a list of all structures that fail to come into compliance and submit a quarterly progress report to FEMA beginning July, 2003.
- 10) Evaluate Monroe County's Flood Insurance Inspection and Compliance Program by June 2004, and if necessary, develop and implement further

remedial actions with FEMA's approval, to ensure enforcement of the County's floodplain regulations.
The County Growth Management Division staff has the sufficient resources to implement the above program over a six year period.

ENROLLED

CS/HB 407

2011 Legislature

1 A bill to be entitled
2 An act relating to residential building permits; amending
3 s. 553.79, F.S.; prohibiting local enforcing agencies and
4 building code officials or entities from requiring certain
5 inspections of buildings, structures, or real property as
6 a condition of issuance of certain residential building
7 permits; providing for application; providing for
8 conditional repeal; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (17) is added to section 553.79,
13 Florida Statutes, to read:

14 553.79 Permits; applications; issuance; inspections.—

15 (17) (a) A local enforcing agency, and any local building
16 code administrator, inspector, or other official or entity, may
17 not require as a condition of issuance of a one- or two-family
18 residential building permit the inspection of any portion of a
19 building, structure, or real property that is not directly
20 impacted by the construction, erection, alteration,
21 modification, repair, or demolition of the building, structure,
22 or real property for which the permit is sought.

23 (b) This subsection does not apply to a building permit
24 sought for:

25 1. A substantial improvement as defined in s. 161.54 or as
26 defined in the Florida Building Code.

27 2. A change of occupancy as defined in the Florida
28 Building Code.

ENROLLED

CS/HB 407

2011 Legislature

29 3. A conversion from residential to nonresidential or
30 mixed use pursuant to s. 553.507(2)(a) or as defined in the
31 Florida Building Code.

32 4. An historic building as defined in the Florida Building
33 Code.

34 (c) This subsection does not prohibit a local enforcing
35 agency, or any local building code administrator, inspector, or
36 other official or entity, from:

37 1. Citing any violation inadvertently observed in plain
38 view during the ordinary course of an inspection conducted in
39 accordance with the prohibition in paragraph (a).

40 2. Inspecting a physically nonadjacent portion of a
41 building, structure, or real property that is directly impacted
42 by the construction, erection, alteration, modification, repair,
43 or demolition of the building, structure, or real property for
44 which the permit is sought in accordance with the prohibition in
45 paragraph (a).

46 3. Inspecting any portion of a building, structure, or
47 real property for which the owner or other person having control
48 of the building, structure, or real property has voluntarily
49 consented to the inspection of that portion of the building,
50 structure, or real property in accordance with the prohibition
51 in paragraph (a).

52 4. Inspecting any portion of a building, structure, or
53 real property pursuant to an inspection warrant issued in
54 accordance with ss. 933.20-933.30.

55 (d) This subsection is repealed upon receipt by the
56 Secretary of State of the written certification by the chair of

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

ENROLLED

CS/HB 407

2011 Legislature

57 | the Florida Building Commission that the commission has adopted
58 | an amendment to the Florida Building Code which substantially
59 | incorporates this subsection, including the prohibition in
60 | paragraph (a), as part of the code and such amendment has taken
61 | effect.

62 | Section 2. This act shall take effect July 1, 2012.